



# ITG News

Keeping First Nations Informed



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## Message From The Director

As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. Every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at [www.irs.gov/tribes](http://www.irs.gov/tribes). I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.

Christie Jacobs



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To add your name or e-mail address to our mailing list, please contact us via e-mail at [gary.l.hahn@irs.gov](mailto:gary.l.hahn@irs.gov), or call Gary Hahn at (716) 686-4862

*Account or Tax Questions??  
Call Customer Account Services  
at 1-877-829-5500*



## On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at [www.irs.gov/tribes](http://www.irs.gov/tribes). The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

## Federal Unemployment Tax

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **please contact your ITG Specialist as soon as possible**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at [www.irs.gov/tribes](http://www.irs.gov/tribes) contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.



## Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party’s investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian Country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at [kenneth.g.voght@irs.gov](mailto:kenneth.g.voght@irs.gov) to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.



## Deadline for 2000 FUTA Refunds

Federal Unemployment Tax (FUTA), as discussed in the article on page 2 of this newsletter, is an area of tax law under which federally recognized Indian tribes and their wholly owned affiliates and subdivisions receive special treatment.

Beginning with tax year 2000, federally recognized tribes are not required to file or pay FUTA taxes if they were in compliance with their state unemployment program. The IRS Office of Indian Tribal Governments has worked with tribes to ensure refunds of overpaid FUTA accounts were processed for tax years beginning with 2000. **You should take action if you determine a 2000 FUTA refund has been overlooked.**

For every return that is filed, or credit that is deposited with the Internal Revenue Service, the law establishes a statute of limitations for refunds. Internal Revenue Code section 6511 establishes a period of limitation on filing claims for refund of an overpayment of any tax. Generally, a claim for refund must be filed within three years from the date the return was filed, or two years from the date the tax was paid.

Form 940, *Federal Unemployment Tax Return*, for the year ending December 31, 2000 was due to be filed on January 31, 2001. The statute of limitations for a refund is January 31, 2004. **If you believe your tribe, or any wholly owned entity is due a FUTA refund for 2000, you have until January 31, 2004 to either:**

1. Present your claim for refund to your IRS Indian Tribal Government Specialist, or
2. Send it directly to:

**Internal Revenue Service  
1973 N. Rulon White Blvd.  
Ogden, Utah 84201**

The law forbids the refund of any overpayment claimed after the expiration of the statute of limitations. After January 31, 2004, any unclaimed FUTA refunds for 2000 will not be available for refund or credit to another tax account. The Office of Indian Tribal Governments does not have authority to process refunds that are barred by statute. Please call your Indian Tribal Government Specialist if you have any questions about FUTA.

## ITG Contacts— Oklahoma Indian Tribal Government Specialists:

Gary Hahn, Mgr.	Cathy Bird	Ann Friesner	Elizabeth Johnson	Linda Sweet
(716) 686-4862	(405) 297-4757	(918) 581-7030 x 276	(918) 581-7030 x228	(918) 581-7030 x 243
(716) 686-4818 FAX	(405) 297-4495 FAX	(918) 581-7093 FAX	(918) 581-7093 FAX	(918) 581-7093 FAX
PO Box 227 Buffalo, NY 14225	Mail Stop 4900 OKC 55 N. Robinson St OKC, OK 73102	Mail Stop 4900 TUL 1645 S. 101st E. Ave. Tulsa, OK 74128	Mail Stop 4900 OKC 55 N. Robinson St OKC, OK 73102	Mail Stop 4900 TUL 1645 S. 101st E. Ave. Tulsa, OK 74128
gary.l.hahn@irs.gov	catherine.s.bird@irs.gov	ann.c.friesner@irs.gov	eliza- beth.g.johnson@irs.gov	linda.m.sweet@irs.gov



## Year-End Information Reports

Once again, it's time for year-end information reports. The following table illustrates some of the information reports Indian tribal governments might be required to file.

<u>Form Name and Number</u>	<u>Type of Form</u>	<u>Where to Submit</u>	<u>Filing Deadline</u>	<u>Transmittal Form Required for Paper Forms</u>
Form 1042-S <i>Foreign Persons U.S. Source Income Subject to Withholding</i>	Information Report – Casinos use to report gambling winnings of non-resident aliens and mandatory withholding	Internal Revenue Service	February 29, 2004 if by paper. March 31, 2004 if by magnetic media or electronically	Form 1042-T <i>Annual Summary and Transmittal of Forms 1042-S</i>
1099-MISC 1099-INT 1099-DIV, and others	Information Report – to report various payments and withholding if applicable	Internal Revenue Service	February 29, 2004 if by paper. March 31, 2004 if by magnetic media or electronically	Form 1096 <i>Annual Summary and Transmittal of U. S. Information Returns</i>
Form W-2G <i>Certain Gaming Winnings</i>	Information Report – to report gambling winnings and withholding if applicable	Internal Revenue Service	February 29, 2004 if by paper. March 31, 2004 if by magnetic media or electronically	Form 1096 <i>Annual Summary and Transmittal of U. S. Information Returns</i>



## Year-End Wage Reporting

Just as it's time for year-end information reports, it's time to think about year-end wage reports. Year-end wages are reported to the Social Security Administration on Form W-2, [Wage and Tax Statement](#). Right now, before the filing season begins, is the time to take positive action to avoid the most common wage reporting mistakes.

The Social Security Administration maintains wage information over a person's working lifetime. From each individual's earnings record, benefits for retirement, disability, or survivors' benefits are paid, including eligibility for Medicare. The Social Security Administration receives a significant number of wage reports each year that contain errors that cause a workers' earnings to be placed in a suspense file until the correct information is furnished. It is important for an employer to prepare for year-end reporting to minimize errors.

To minimize the number of wage items going into the suspense file, employers should:

1. Make sure Forms 941, [Employer's Quarterly Federal Tax Return](#), are in balance and will match the total of Forms W-2, and Form W-3, [Transmittal of Wage and Tax Statements](#). Form 941 information provided to the IRS for the year must match Form W-3 information provided to the Social Security Administration.
2. Make sure your payroll software has the correct tax year before processing or printing Form W-2 data.
3. Magnetic media and electronic filers should obtain the latest publications as soon as available and strictly follow the published guidelines for the current tax year. The publications are available online at [www.ssa.gov/employer/](http://www.ssa.gov/employer/).
4. Make use of the EVS system for verification of Social Security Numbers. This is a free service for employers and more information can be found at <http://www.ssa.gov/employer/evs2002.doc>

Employers will first want to determine the number of Forms W-2, *Wage and Tax Statements*, to be submitted. If 250 or more are required to be submitted in a calendar year, either magnetic media (magnetic tapes, tape cartridges, or 3.5 inch diskettes) or electronic filing is required. If fewer than 250 statements in a calendar year are required to be filed, the employer may file paper forms.

For employers currently using magnetic tapes or tape cartridges, the last year that Forms W-2 may be submitted to Social Security using that medium is Tax Year 2004. The last year to submit using 3.5 inch diskettes is Tax Year 2005. Employers now using those methods will be required to submit year-end wage reports using electronic filing in the future.

Some employers who formerly submitted paper statements may wish to convert to electronic submission because it is a fast, safe and simple way to file their Forms W-2. Other employers may exceed the 250 statement limit in 2003 and be required to convert to magnetic media or electronic filing. Those first time electronic filers should visit the website at [www.ssa.gov/employer/Business Services Online](http://www.ssa.gov/employer/Business%20Services%20Online) Welcome Page for complete instructions. It is important to register and set up a Personal Identification Number (PIN) and Password before the filing season begins.

If you have any questions about year-end wage reporting, please contact your Indian Tribal Government Specialist.

# Federal Tax Calendar for First Quarter 2004

## January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3 -1/6	10
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7 -1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

## February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4 -2/6	12	13 * Payroll date 2/7 -2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

\* = Make a Payroll Deposit if you are under the semi-weekly deposit rule. \*\* = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

## March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5  Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

\*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

\*\*= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

### Return Filing Dates

#### By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

#### By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

#### By March 31

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement.

File Form 730 for applicable wagers accepted during February 2004.